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OFFICE OF PETITIONS

In re Application of
Koyama, et al.
Application No. 10/652,924
Filed: August 28, 2003
Attorney Docket No. 03496/LH

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DECISION ON PETITION

This is a decision on the paper titled "PETITION UNDER 37 CFR 1.182 SUBMITTING OMITTED ITEM AND REQUESTING ORIGINAL FILING DATE", filed September 7, 2004, requesting that the above-identified application be accorded a filing date of August 28, 2003, with Figure 8 of the drawings as part of the original disclosure.

The petition is **DISMISSED**.

The application was filed on August 28, 2003. However, on July 12, 2004, the Office mailed a "Notice of Omitted Item(s) in a Nonprovisional Application", stating that the application had been accorded a filing date of August 28, 2003, and informing applicants that the drawing of Figure 8 described in the specification appeared to have been omitted.

In response, the present petition was filed. Petitioner points out that the application incorporates by reference Japanese application no. JP 2002-251232.

MPEP § 201.06(c) states that:

. . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to **amend** the continuing application to include any subject matter in such prior application(s), **without the need for a petition** (emphasis added).

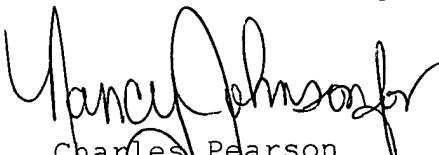
Obviously, in view of the incorporation by reference of the foreign application¹, the drawing of Figure 8 is not new matter if it was a part of the disclosure of that application.

The petition fee of \$130 has been charged to petitioner's deposit account, as authorized.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of August 28, 2003, including an indication in Office records that 8 sheets of drawings were present on filing.

Thereafter the application will be forwarded to Group Art Unit 3724 for consideration by the examiner of the petition filed September 7, 2004, as an amendment requesting entry of Figure 8.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Cliff Congo at 571-272-3207.


Charles Pearson
Director
Office of Petitions

¹ See MPEP 201.13(II)(G).